## National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570		Tel. (202) 273-1991
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Press Release ( <u>R-2536</u> ):	Richard Simon is Na Regional Office	nmed Regional Attorney in N	LRB's Indianapolis

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Electrical Workers (IBEW) Locals 98 and 380 (MCF Services, Inc., t/a State Electric, et al.) (4-CC-2214, et al.; 342 NLRB No. 74) Norristown, PA July 30, 2004. Chairman Battista and Member Schaumber affirmed the administrative law judge's finding that, among others, Electrical Workers Local 98 violated Section 8(b)(4)(ii)(B) of the Act through its agent, Organizer Timothy Browne on June 8, 1999, by threatening the Cheltenham School District (the District) with picketing at its high school construction site if it awarded a contract to State Electric (State), a non-union electrical contractor. They also affirmed the judge's finding that Local 98 violated Section 8(b)(1)(A) in August 1999 by blocking State employee Vincent Ponticello from performing his work at the District's job site, threatening Ponticello with physical harm, and coercively photographing him and other employees at the site. The majority agreed with the judge's finding that Local 380 was liable for Local 98 Organizer Browne's unlawful threat to the District at its June 8 meeting and for his unlawful conduct at the District jobsite in August. [HTML] [PDF]

Local 380 excepted to the judge's finding that it is liable for Organizer Brown's misconduct, contesting the judge's reliance on the joint-venture theory and his application of the Board's agency law principles. The majority deemed it unnecessary to pass on the judge's application of the joint-venture theory because they agreed with his alternative analysis that Local 98 representative Browne was acting as Local 380's agent when he unlawfully threatened the District at its June 8 meeting and engaged in unlawful activity at the jobsite in late August.

Dissenting in part, Member Liebman, while agreeing with her colleagues that Local 98, through its organizer Timothy Browne, committed unfair labor practices, noted that no direct conduct by Local 380 is alleged to be unlawful. She would dismiss the complaint with respect to Local 380 and find that the General Counsel failed to establish that Local 98 Organizer Browne was acting as an agent of Local 380 when he (1) threatened the District on June 8 with picketing at its construction site or (2) engaged in coercive conduct at the District's jobsite in late August 1999.

Member Liebman said: "The facts are that Local 380 authorized Browne to solicit authorizations cards, and Browne visited some of State's jobsites in late-1998 and 1999 to encourage support for the campaign. But, Browne's misconduct did not occur in these meetings." She would overrule Board decisions applying a joint venture theory of liability under the Act, and would reverse the judge's finding that Local 380 was vicariously liable as a joint-venturer for Local 98's unfair labor practices involving State.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by MCF Services, Inc., t/a State Electric, et al.; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(4)(i) and (ii)(B). Hearing at Philadelphia, Nov. 1-3, 1999. Adm. Law Judge George Alemán issued his decision June 23, 2000.

Windward Roofing and Construction Co., Inc. (13-CA-38606; 342 NLRB No. 70) Chicago, IL Aug. 2, 2004. The Board, in this supplemental decision, affirmed the administrative law judge's findings that the Respondent breached a settlement agreement it entered into with Illinois District Bricklayers Local 1 and the General Counsel: (1) by hiring Carlos Hernandez on Sept. 12, 2002 as a bricklayer in its mason division rather than offering the position to one of the three discriminatees; and (2) by its December 2, 2002 offer of roofer positions to the discriminatees, who were bricklayers and tuck pointers. [HTML] [PDF]

Contrary to the judge, the Board did not find the Respondent's December 2 offer deficient on the basis that the instatement obligation could be satisfied only by offering the discriminatees jobs as tuck pointers or bricklayers. Instead, it found that the Respondent was obligated to offer the discriminatees jobs to any position for which they were qualified and that the Respondent breached the Stipulation when it extinguished the discriminatees' preferential hiring rights after they declined the roofing positions because they believed they were not qualified for those positions.

The judge found, and the Board agreed, that the provisions of the Stipulation govern the applicable remedies in view of the breach and that the Respondent is obligated to pay \$16,506,42—the difference between what it has already remitted to the Board and the total backpay figure of \$82,606.44. The Board modified the judge's recommended order--to the extent that it requires the Respondent to offer tuck pointer or bricklayer jobs to the discriminates--to read that the Respondent is obligated to offer the discriminatees "any position for which they are qualified." It deleted the judge's reference to the 1-year durational time limitation placed on the preferential hiring provision of the stipulation, agreeing with the General Counsel and the Union that the limit on the preferential hiring obligation improperly rewards the Respondent for its unlawful conduct.

In the prior proceeding (333 NLRB 658 (2001)), the Board granted the General Counsel's motion for summary judgment and ordered the Respondent, among others, to make whole discriminatees Jeff Bloom, Andrew Gasca, and Donald Newton for any loss of earnings they may have suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. The parties' settlement agreement contained certain remedial provisions and provided that the Respondent would satisfy its backpay obligations by the payment of \$66,100.12. Following a dispute over whether the Respondent had satisfied its obligations, the General Counsel revoked the settlement agreement and issued a new compliance specification and notice of hearing, setting forth a total backpay amount of \$82,606.44 owed to the discriminatees in apportioned amounts. In its answer and amended answer, the Respondent denied that it had breached the Stipulation and disputed the amount of backpay in the new specification.

(Chairman Battista and Members Walsh and Meisburg participated.)

Hearing at Chicago, Sept. 24-25, 2003. Adm. Law Judge Michael A. Marcionese issued his supplemental decision Feb. 5, 2004.

#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

David Staviski d/b/a Chemung Valley Accoustical (Individuals) Erin, NY August 4, 2004. 3-CA-24227(E), 24231(E); JD-73-04, Judge Wallace H. Nations.

*Johnson Technology, Inc.* (Communications Workers) Muskegon, MI August 4, 2004. 7-CA-45747, 45795; JD-66-04, Judge C. Richard Miserendino.

*Grinnell Fire Protection Systems Co.* (Road Sprinkler Fitters Local 699 and Plumbers) Exeter, NH August 3, 2004. 5-CA-25227, 25406; JD-74-04, Judge Richard A. Scully.

Ceridian Corp. (Service Employees Local 113) Eagan, MN August 5, 2004. 18-CA-17123; JD(ATL)-39-04, Judge William N. Cates.

Sodexho America, LLC (Hotel & Restaurant Employees Local 471) Plattsburgh, NY August 6, 2004. 3-CA-24263, et al.; JD-75-04, Judge Arthur J. Amchan.

*Deffenbaugh Disposal Services, Inc.* (Teamsters Local 554) Omaha, NE July 30, 2004. 7-CA-22625, 17-RD-1683; JD(SF)-59-04, Judge Gregory Z. Meyerson.

St. Vincent Hospital (Hospital and Health Care Employees District 1199 NM, AFSCME) Santa Fe, NM August 4, 2004. 28-CA-19039; JD(SF)-61-04, Judge Mary Miller Cracraft.

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#### WITHDRAWAL OF ANSWER

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the withdrawal of the Respondent's answer to the complaint.)

Mason Contractors Association of Southeast Missouri (Bricklayers Local 23) (14-CA-27724;

342 NLRB No. 73) Cape Girardeau, MO July 30, 2004.

#### LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

#### DECISION AND DIRECTION OF SECOND ELECTION

Middlesex County Economic Opportunity Corp., Middlesex County, NJ, 22-RC-12415, August 4, 2004

#### **DECISION AND ORDER REMANDING**

Crowne Plaza LaGuardia Airport, East Elmhurst, NY, 29-RC-10192, August 4, 2004

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

Beary Landscaping, Orland Park, IL, 13-RC-21198, August 6, 2004

### DECISION AND DIRECTION[that Regional Director open and count ballots]

T.C.O., L.L.C., Corbin, KY, 9-RC-17892, August 6, 2004

#### DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Outdoor Replacement Lighting, Inc., Minneapolis, MN, 18-RC-17237, August 6, 2004 Kira, Inc., Tinker Air Force Base, OK, 17-RC-12247, August 6, 2004

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

JBI Electrical Systems, Inc., Fort Worth, TX, 16-RC-10592, August 4, 2004 Kennecott Utah Copper Corporation, Bingham Canyon, UT, 27-UC-212, August 5, 2004 Hale House Center, Inc., New York, NY, 2-RC-22639, August 5, 2004

#### Miscellaneous Board Orders

# ORDER[granting Employer's appeal of Regional Director's determination on mail ballot election and remanding to Regional Director for further appropriate action]

American Red Cross, Heart of America Blood Services Region, Peoria, IL, 33-RC-4866, August 4, 2004

# ORDER[denying Employer's appeal of Regional Director's Order directing that ballots be impounded]

Sprint-Florida, Incorporated, Maitland, FL, 12-RC-9048, August 6, 2004